

Legal Traditions of the World, H. Patrick Glenn [Oxford: Oxford University Press, 2000. xxiv + 371 pp, paperback, US\$29.95]

What kind of reader would be most tempted to pick up a book with the grand title “Legal Traditions of the World”? The likely candidates, I would say, are those who are searching for an overview of the world’s legal traditions, and those who might like to use the book as a guiding reference before entering into a particular field. Indeed, the advancement of our understanding of different legal traditions is one of the aims of the author. In his work, Glenn walks us through seven legal traditions in the order of chthonic law (perhaps better understood as customary or indigenous law), Talmudic law (Jewish law), civil law, Islamic law, common law, Hindu law and Asian legal traditions. However, Glenn’s ambition is not fully realised given the scope of materials that he has to cover.

While seeking to advance the reader’s understanding by mapping out a myriad of legal traditions, Glenn’s ultimate aim is to explore what we can do with our traditions. From the outset, Glenn explains that a deeper understanding of traditions is essential because of a decline in faith towards normative authority of formal sources of law, of growing collaboration among jurists to solve world problems, and of an increasing role of legal influence in the global scene. Throughout his work, Glenn is consciously pushing the discussion of legal traditions onto the global stage, in particular the issue of human rights. In each chapter, he explores how each tradition can contribute to the human rights debate.

Because of Glenn’s twin ambitions, to give an account of the legal traditions of the world and to demonstrate that we can do something with them, the book is oriented towards these two goals. Chapters 1, 2 and 10 are for readers “not so much interested in law, but interested in tradition and its relation to society”,¹ whereas the other chapters are for readers who are eager to learn about the substantive aspects of legal tradition.

The structure and content of the book will be briefly dealt with before I share my own views. Chapter 1 lays out the framework of the book by defining tradition as a “bran-tub of information”. By this, Glenn means that tradition is composed of collective information that is transmitted from generation to generation. Its survival, legitimacy and authority depend on its “persuasiveness” to the current generation. Chapter 2 extends this concept of tradition from a historical perspective onto the global stage. Glenn argues that growing interaction between individual states naturally results in a competition for each tradition to influence and out-race the other. Of all the traditions,

¹ At p xxii.

Glenn considers Western, Islamic and Asian traditions to be the main competitors in the process of globalisation. After discussing the seven chapters on substantive laws, Chapter 10 summarises the essential elements of each tradition, and takes up the formidable task of reconciling their differences.

In the seven chapters on the substantive aspects of legal traditions, the stated aims of Glenn are to discuss the sources and content of each particular tradition, the justification for its lasting influence, its reception to change and its relation to other traditions. In each of these seven chapters, Glenn also addresses certain themes. He offers examples of state law under the particular tradition, how the particular tradition perceives the notion of rights, how susceptible it is to corruption, and what it can offer to the entire family of traditions. The common thread that runs through each of these seven chapters is how each tradition can contribute to the advancement of human rights issues.

Though one can have few objections to Glenn's partition of his book into "theoretical" and "substantive" parts, and to his choice of issues in each chapter, the arrangement of his seven substantive chapters is puzzling. The arrangement of Chapters 3 to 6 (from chthonic law to common law) reflects the placement of each tradition in historical time with the assumption that chthonic law has its roots in time immemorial. He then treats Talmudic law, followed by civil law with the Roman conquest of a large part of the world after Christ. Concurrent with these developments was the simultaneous development of the Islamic legal tradition and the common law tradition, but at later stages in this chronological order. Hindu and Asian legal traditions are left to be discussed at the end and they stand oddly apart from this arrangement. Despite Glenn's claim that readers who are only interested in one particular tradition can just concentrate on the individual chapter, Glenn makes a lot of cross references and comparisons between the chapters. For example, both Talmudic and Islamic legal traditions share a common hierarchy of legal sources. They are described by Glenn as traditions based on "revelation", touching all areas of private law with special concerns over diet, hygiene, rituals and prayers. In the discussion of civil and common law legal traditions, while Glenn points out their similarity in origins and contributions to the world for their high regard to human reason and respect to individuality, the chapters are divided by the discussion on Islamic legal tradition. A better choice may have been to group legal traditions and religious connotation (Talmudic, Islamic and Hindu) together, put chthonic and Asian legal traditions together for they manifest an entire way of living, with discussion on civil legal tradition and common law tradition closely following each other.

Arrangement of chapters aside, I also found myself in argument with Glenn in other respects. A major criticism is that Glenn's practical aim of "doing something" with different traditions is contradictory of the very definition of

tradition itself. Throughout the book, Glenn hopes that we can learn from each tradition, draw out its best part so that we can make a hybrid of all the best qualities. However, as intimated by Glenn himself, tradition is by nature a home-grown phenomenon. How, then, could one transplant tradition so easily? At points in his book, Glenn stresses that tradition is “inextricably interwoven with one’s beliefs”,² is about a way of living,³ is dependent on an “accumulating character”⁴ with “a particular style of rationality”,⁵ and is rooted in “a particular context”.⁶ The result of uprooting and exporting tradition is, therefore, bound to be futile. Perhaps Glenn himself also realises the difficulty and impossibility of “mixing” and “reconciling” different traditions. The last chapter of the book, “Reconciling Legal Traditions: Sustainable Diversity in Law” is in fact a simple affirmation of the diversity in our world and the philosophy that life should move on. Glenn lists what each tradition can offer and criticises the inadequacy of each. What he means by reconciling the different traditions is an urge for exchange of information and acceptance of differences. The concern over the human rights debate also ends in vague rhetoric where Glenn advises us to examine particular problems in detail in the given circumstances of each country. However, after becoming familiar with the people, the places, the schools, the local circumstances, and the specifics, what standard should one apply? The local one or a universal one yet to emerge? It would be helpful if Glenn could offer us concrete examples of how to solve a particular problem, and to show what difference it would make if one is to leave one’s neighbours alone by developing an appreciation for others’ traditions.

Viewed from the above perspective, Glenn has arguably failed to accomplish the goal of informing his readers about what can be done with world traditions and to convince them that they can solve world problems if they are equipped with this knowledge. And what of Glenn’s second goal of letting his readers learn about the world’s traditions? Glenn has fared much better in this regard by delivering a colourful, interesting and stimulating account of various traditions. The choice of adjectives in the above sentence is meant to be individually applied to individual chapters in the book.

This is largely due to the fact that Glenn has adopted different styles of writing in each chapter. For instance, Glenn takes the reader step by step towards an understanding of Talmudic and Islamic legal traditions. These two chapters reflect a clear and descriptive approach where the origins of the two legal traditions are traced and the characteristics of each are clearly

² At p 57, discussion on chthonic law.

³ At p 261, discussion on Hindu law.

⁴ At p 97, discussion on Talmudic law.

⁵ At p 100, discussion on Talmudic law.

⁶ At p 218, discussion on common law.

identified. In contrast, the other chapters seem to assume that readers have a basic knowledge of the subject matter. In the latter case, readers may also find themselves in constant debate with the author, especially regarding the chapters on chthonic, Hindu and Asian legal traditions.

To comment on chthonic legal tradition, Glenn includes African and South-east Asian customary law, native law from North America and Inuit legal tradition. It is, thus, difficult for Glenn to avoid making over-generalised and sweeping statements. Moreover, the nature of chthonic legal tradition is often intangible and fluid. In the end, what the readers learn from this chapter is essentially that chthonic family law "in general" is informal and consensual, and that chthonic notions of property are "generally" for communal or collective enjoyment. What we should have learnt from chthonic thought is, however, its respect for land and environment. Even if the above statements are true, one cannot not help question whether it is meaningful to reduce such a kaleidoscope of colourful legal landscapes into a single formula. Without doubt, the nature of the legal tradition concerned also poses difficulties for depiction. This is equally true for the discussion on Hindu and Asian legal traditions.

Both Hindu and Asian legal traditions have gone through evolutions of thousands of years. Moreover, legal traditions are just facades of a more embracing tradition in India and other parts of Asia. Inevitably, this brings us back to my first major criticism: How can we export traditions? Though Glenn quotes evidence that Hindu legal tradition does survive in east Africa and in some Western states, he understates the fact that it is practised by Hindu people who are living out their entire tradition. A more interesting and significant point raised by Glenn is the possibility of Hindu law co-existing with modern state law in India. Glenn merely raises the issue and glosses over it without much elaboration. The nature of Hindu legal tradition could well be an exemplar for Glenn to illustrate how legal tradition could supplement formal legal order when the latter lacks supportive normativity.

Similar inadequacy can also be observed in the discussion on Asian legal tradition. Other than tracing the historical development of the tradition and its gradual displacement by Western legal systems in South-east Asia, Korea, Japan and China, Glenn says little about the relevance of the tradition to contemporary Asia, and its interaction and relation to formal legal orders. Moreover, the chapter on Asian legal tradition is also confusing. At the beginning of the chapter, Glenn explains that Asian legal tradition, including Confucianism, refuses to root normativity in formal structures and sanctions. He describes it as a tradition based on "persuasion and obligation".⁷ Glenn further points out that there is "little place for describing the detail of Confucian regulation of

⁷ At p 280.

society”⁸ for one is supposed to understand its general teaching. Anyone who has some familiarity with Confucianism will have a hard time in accepting this supposition. It is well known that Confucius’ teachings were written in the Three Books detailing how society should be organised and how relationships should be ordered. It is true that Confucius despises the use of legal sanctions and the reliance on legal rules, but the emphasis that he places on family and morals has resulted in a much more powerful and pervasive form of social sanctions. In this social world, obligation has an indispensable role to play because it is the organising force of human relations. Despite the fact that Glenn explains the concept of *li* in the latter pages of the chapter as a set of moral rules, it would have helped if Glenn could have explained at the outset the binding nature of “persuasion” and the force of social sanctions in Asian legal tradition.

Notwithstanding these criticisms, Glenn has offered a great deal of food for thought. I would say that the best chapters in his book lie in the discussion on civil and common law legal traditions. In these chapters, Glenn adopts an interpretative approach where he is making the best sense of accepted knowledge and introducing new perspectives to apparently familiar areas.

Instead of reiterating the development of civil law or merely pointing out its essential characteristics, Glenn places the discussion of civil law in the context of the rise of Western science in the age of reason when rationality and individuality were dominant ideals. Glenn further advances his argument by perceiving civil law legal tradition as playing a paramount role in continental Europe because it facilitated the rise of the nation states and the search for identity. Following this line of logic, Glenn has confidence in the influence of civil law legal tradition on the European Union. Whether or not one agrees with Glenn’s view, he has offered a new slant on a familiar topic.

The account of common law legal tradition is even more fascinating. Glenn starts the chapter with the bold statement that the birth of the common law is a pure historical accident, and the prominence given to judges and the jury is largely a result of political concern. The new rulers in 1066 were suspicious of the pre-existing civil law systems and were eager to look for their own loyal adjudicators. As the Normans were keen to establish their legitimacy, they were willing to incorporate the locals into a jury system. It was only at a much later stage that judges allied themselves with Parliament against royal executive authority. Glenn also observes that common law legal traditions were heavily influenced by Islamic legal tradition as evidenced in the development of the Inns of Court,⁹ and its style of debate. Continuing along the historical trajectory, Glenn concludes by pointing out the mutation of the common law in the American, Canadian and Australian systems, where there is a re-alliance

⁸ At p 283.

⁹ At p 209–210.

to its civil law counterpart. Unlike most chapters, Glenn does not end the discussion on common law by stating what it can contribute to the world, rather he focuses on the problems within the tradition such as the growth of large firms which exacerbates the problem of ethical control and makes it difficult to avoid conflicts of interest among lawyers and among clients themselves. Glenn also attributes the problem of the "lost lawyer", those who lost sight of their primary obligation to society, to the nature of common law tradition. Though one may have noticed all these problems, rarely would one point one's finger at the legal tradition. By delivering a plausible argument, the chapters on civil and common law legal traditions have provided a thought provoking and stimulating account of legal traditions.

Overall, this book may not be a suitable guide for readers who are looking for a quick accessible reference to the terrain of legal traditions. It is hard to do justice to any legal tradition within the length of 50 pages. To do so would risk either giving a broad-brush overview, or delivering an advanced study of the subject. Glenn seems to have chosen to tread a middle path. His work is catered more to those who already have a background, however limited, of a particular tradition or traditions and would like to know more. The detailed footnotes and numerous references in the book are particularly helpful indicators for readers who are eager to delve further into the vast sea of legal traditions.

*Anne Cheung**

* Assistant Professor, Faculty of Law, University of Hong Kong.